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### **Comments on Alexander Pruss' "Counseling Lesser and Proportionate Evils: A Principled Defense"**

Alex Pruss has presented us with an interesting and helpful paper, in which he skillfully utilizes the Principle of Double Effect to explain why counseling the lesser evil in constrained situations is not always immoral. For the most part I am inclined to regard his analysis favorably, but I do want to point out some issues that I think deserve attention. In particular, while Pruss' analyses of the Alice and Bob situation and of Maximillian Kolbe's situation are both quite plausible, his analysis of bribing a corrupt official seems invalid to me. Let me explain why.

Pruss reasons that Bob and Kolbe need not be intending for Alice and Fritsch to actually choose the lesser evil, but only to favor the lesser or proportionate evil over the worse evil. When the worse evil is disfavored it is dismissed from further consideration, and that is what Bob and Kolbe intend to achieve. Certainly it is foreseen that the other person would go on to choose the lesser evil. But this is not intended, for that actual choice is not necessary for Bob and Kolbe to achieve their end of avoiding the greater evil. If Fritsch is induced to favor killing Kolbe over Gajowniczek, and then, inspired by Kolbe's heroism, chooses to forego killing altogether, all the better. Alternatively, if no choice *at all* follows after the morally neutral act of favoring the lesser evil over the greater one, that is, if the deliberation process ends in indecision, then neither the lesser nor the greater evil would be committed, and Kolbe's intended goal of saving Gajowniczek would be achieved.

However, the proposed case of bribery is not similar in the relevant respect. The citizen of the unjust regime not only needs the corrupt official *not* to choose to withhold what the citizen is entitled to, but needs her to *actually choose* to fulfil his legal right. Here the end is not accomplished merely by the favoring of the lesser evil over the greater one. For suppose that after the official dismisses the worse option of choosing to withhold the citizen's legal right, she

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does not then proceed to choose to accept the bribe. The citizen would not receive his entitlement, would not achieve his intended end, and would not have successfully employed his chosen means. In this case the official's choice of the lesser evil *is* one's means, and thus the course of action cannot be justified on the Principle of Double Effect.

I'll put this another way: in the case of Bob and Alice, if Bob were given a choice between having Alice choose to kill him, choose to clean out his bank account, or not to choose either, Bob would certainly choose the third option. But if the citizen of the unjust regime is given a choice between having the corrupt official choose to withhold what he is entitled to, choose to take the bribe and do what he requests, or not to choose either, the citizen would not choose the third alternative. For if the official does not choose either, she is not choosing to do for him what he is entitled to, and the deed remains undone.

An entirely different analysis is required to justify the bribery case. I suggest the following. Some actions only have the significance and meaning they do because of social conventions. For example, handing someone several pieces of paper with large numbers and historic faces on them only counts as "paying" him because of the social convention that renders those pieces of paper legal tender. Furthermore, paying someone for a service is only "bribery" because he occupies a position of legal authority, something that presupposes the existence of social institutions such as the rule of law, governmental offices and duties, and so forth.

In the case of a thoroughly corrupt country, these institutions no longer really exist, but only false images of them, images that everyone knows to be false. In such a situation, "bribery" is not really bribery. It is the simple case of an exchange of goods for services, a purchase like any other. Now Pruss is absolutely right that one has to consider all the circumstances before deciding that paying an official for services, even in such countries, is acceptable. Perhaps one

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would be perpetuating an unjust regime, or destroying whatever shred of dignity the laws might still have. But the action of paying for services would be morally neutral in itself. In this way Pruss' analysis of the bribery case does not count against O'Brien's and Koons' version of double effect. For Pruss' own analysis is implausible, and there is a plausible alternative analysis that sidesteps the issue altogether. I note, however, that I am not here taking any position on the relative merits of Pruss' or O'Brien's and Koons', or anyone else's interpretation of double effect.

The other points I have to make are not so much criticisms but clarifications. They depend upon a Thomistic analysis of human action, which I believe to be correct in its main outlines. Not all, of course, accept the Thomistic position. Yet I think the Thomistic analysis will be of interest to many of those present.

First of all, in his version of the four conditions for the utilization of PDE, Pruss makes a distinction between the means and the action by which the means is achieved. Aquinas would regard the action as part of the means, indeed the essential part of the means (*ST I-II*, q. 13, a. 3–4). Some ends are achieved directly by a person's action. Sometimes, however, the person's action has to bring about another, instrumentally good state in order for the end to be achieved. And since Aquinas holds that not only the action an agent immediately performs, but the entire means-complex, must be good for a human action to be moral, he would take no issue with Pruss' utilization of two conditions to make explicit what would be implied in one condition for him: namely, that the means be good or neutral.

Secondly, Aquinas distinguishes, in the process of deliberation, between the will-acts of consent (*consensus*) and choice (*electio*). Deliberation begins with the intention to achieve a definite end by some, as yet unspecified, means. As the deliberation process yields possible ways

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to achieve the end, the will either *consents* to various options as good and acceptable (“I’m ok with that,”) or rejects them as unacceptable. If several acceptable options are consented to, then the will has to choose one *over* the others. If there is only one acceptable option, consent and choice are indistinguishable (*ST I-II*, q. 15, a. 3, ad 3). This is important because it is not only immoral to *choose* an evil object; it is immoral to *consent* to one as well (*ST I-II*, q. 74, a. 8, ad 2). Hence in counseling the lesser evil, it seems that one must avoid intending the other to even *consent* to evil options.

But this very restrictive condition is loosened somewhat by Aquinas’ claim that consent is an act of “the higher reason” (*ST I-II*, q. 15, a. 4). This terminology is inherited from St. Augustine, but what I think Aquinas means by it is that the act of consent has not really taken place until one either subjects the option being considered to a moral and religious analysis and finds it acceptable (perhaps fallaciously), or one decides, perhaps implicitly, that the option will not be subject to a moral and religious analysis at all. Suppose one considers, in one’s deliberation process, an option that is in fact immoral, but whose immorality has not yet manifested itself in deliberation. If one considers it as very much a live option, something promising and interesting, yet at the same time one considers it only tentatively, as subject to final moral approval, then one has not yet consented to evil.

Hence when Bob counsels Alice to favor, on grounds of self-interest, cleaning out his bank account to killing him, Bob has done nothing wrong. Such considerations of self-interest can form part of a blameless deliberation process as long as they are subject to final moral approval. That Alice will not eventually subject her deliberation to moral analysis is not Bob’s fault. He would love it if she did. But that is not in his control. He only wishes to dissuade Alice

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from killing him, and if stating a truth about her self-interest helps him to achieve this end, why not?

I wish to thank Dr. Pruss for his excellent paper, and to state that I am honored to have been able to comment on his work.